

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



V

**Colonial Poplin Nursing Home Inc**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages/bonus  
**Employer:** Colonial Poplin Nursing Home Inc, 442 Main St, Fremont NH 03044  
**Date of Hearing:** June 16, 2016  
**Case No.:** 52406

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts he is owed \$2,100 in unpaid bonus he earned during 2015.

The employer denies the claimant is due any bonus as he did not sign and return the Department Head Profit Sharing Plan Program Description. Further, the document, previously submitted, states in relevant parts, "Participation in the program will be contingent upon active employment with Colonial Poplin/Poplin Way" and "If the participating Department Head is terminated or resigns, this program is not portable and shall terminate upon the Department Head not satisfying the continued full time employment requirement." As of the date of the written objection, the employer had not yet finalized any distributions amounts. She also argues the plan is voluntary on both the employer and employee.

**FINDINGS OF FACT**

The claimant separated from employment with the employer on February 26, 2016, after providing and working the required notice period.

The claimant argues he is due a \$2,100 bonus. He argues the employer implemented a new bonus program during a meeting in March 2015. He asserts he did not sign any agreement with the employer regarding this new program. In August 2015, he had an issue with the employer over an eight hour discrepancy in his wages. The employer corrected the issue and alleges she stated "you are going to feel silly about this when you get your bonus in February." He then attended a meeting in February 2016, to discuss the bonus and he assumed he would be receiving that bonus as he was not told otherwise. He seeks this bonus as due upon his separation of employment on February 26, 2016.

The employer argues the claimant was not eligible for participation in the profit sharing program as he did not sign and return the agreement distributed at the March 2015 meeting. Twelve of the Department Heads signed and returned the agreements between March 17 and March 26, 2015, documentation previously submitted. The claimant did not sign and return the agreement.

RSA 275:49 I requires that an employer inform employees of the rate of pay, including bonuses or profit sharing, at the time of hire. Lab 803.03 (a) requires that an employer inform employees in writing of the rate of pay, including bonuses or profit sharing, at the time of hire and prior to any changes. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer discussed the new profit sharing program with the Department Heads at the March 2015 meeting. The Department Heads were instructed to sign and return the Department Head Profit Sharing Plan Program Description in order to participate. The claimant did not sign and return the agreement.

The employer called a meeting in February 2016, in which she again discussed the bonus program. She reiterated that employees must have a signed agreement on file in order to participate in the profit sharing program.

The claimant's argument that the conversation with the employer in August 2015 and his attendance at the February 2016 meeting discussing the bonus program provide proof he was participating in the program and is due the bonus, is not found persuasive.

The claimant did not "opt in" to the program as he did not sign and return the Department Head Profit Sharing Plan Program Description.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed bonus/wages.

### **DISCUSSION**

The claimant has the burden of proof in these matters to provide proof by a preponderance of evidence that his assertions are true.

Pursuant to Lab 202.05 "Proof by a preponderance of evidence" means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The Hearing Officer finds the claimant failed to meet his burden in this claim.

### **DECISION**

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed bonus/wages, it is hereby ruled that the Wage Claim is invalid.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: June 23, 2016

Original: Claimant  
cc: Employer

MJD/aph